

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC., and
LEIDOS, INC.,**

Plaintiffs,

V.

APPLE INC.,

Defendant.

No. 6:12-cv-00855-RWS

APPLE'S NOTICE OF SUPPLEMENTAL AUTHORITY

Apple Inc. (“Apple”), by and through their undersigned counsel, hereby respectfully asks the Court to consider as supplemental authority VirnetX Inc.’s and Leidos, Inc.’s (“VirnetX’s”) Petition for a Writ of Certiorari (“Petition”) and the Supreme Court’s denial of the Petition, which are relevant to the resolution of Apple’s Motion for Costs (Dkt. 1058). VirnetX’s Petition and the Supreme Court’s denial are attached as Exhibits A and B respectively.

On July 28, 2023, Apple moved for costs because the United States Court of Appeals for the Federal Circuit affirmed that VirnetX’s asserted patents were unpatentable and vacated its Final Judgment against Apple, directing this Court to dismiss the case against Apple as moot. *VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, No. 2020-2271, 2023 WL 2708975, at *11 (Fed. Cir. Mar. 30, 2023); Dkt. 1054 at 2–3; Dkt. 1057 at 1–2; Dkt. 1058. VirnetX opposed Apple’s motion, contending that Apple was not the prevailing party because Mangrove, not Apple, invalidated VirnetX’s patents at the PTAB. Dkt. 1059. Apple filed a Reply on Aug. 18, 2023 (Dkt. 1060), and VirnetX filed a Sur-Reply on Aug. 28, 2023 (Dkt. 1062).

On September 20, 2023, VirnetX filed its Petition. *See* Ex. A at 36. In its Petition, VirnetX asked the Supreme Court to reverse the Federal Circuit's affirmation that its patents were unpatentable because, VirnetX argued, Apple should not have been permitted to join the Mangrove IPRs, in part because Apple "assumed a leading role in the IPRs, taking over oral argument, communications, and expert depositions," purportedly prejudicing VirnetX. Ex. A at 23. The Supreme Court denied VirnetX's Petition on February 20, 2024, and the deadline for VirnetX to petition for rehearing of that order closed on March 18, 2024. *See* Ex. B; Supreme Court Rule 44. All appeals have therefore been exhausted and VirnetX's argument regarding Apple's joinder of the Mangrove IPRs has been resolved with finality.

DATED: March 21, 2024

Respectfully submitted,

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in the compliance with Local Rule CV-5(a) on March 21, 2024. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/Joseph A. Loy

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